

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

| | | |
|--------------------------------|---|--------------|
| DAVID B. McGARREY, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | 02: 07cv1556 |
| |) | |
| PENNSYLVANIA DEPARTMENT OF |) | |
| CORRECTIONS and PENNSYLVANIA |) | |
| BOARD OF PROBATION AND PAROLE, |) | |
| |) | |
| Defendants. |) | |

MEMORANDUM ORDER

Presently pending before the Court is the MOTION FOR LEAVE TO FILE AMENDED COMPLAINT filed by Plaintiff, *pro se* (Document No. 32-30). This case was initiated on March 2, 2007, in the United States District Court for the Eastern District of North Carolina, by Plaintiff, *pro se*, filing a Motion for Leave to Proceed In Forma Pauperis, which attached a Verified Civil Complaint. The only named defendants were the Pennsylvania Department of Corrections and the Pennsylvania Board of Probation and Parole.

On March 9, 2007, the Motion for Leave to Proceed In Forma Pauperis was granted with instructions to the Clerk of Court to file the Complaint and issue the summons prepared by Plaintiff. The Court further directed the U.S. Marshal to serve the summons and a copy of the complaint on the defendants.

On April 18, 2007, Defendants filed a Motion to Dismiss or alternatively Motion to Transfer Case, to which the Plaintiff responded on July 2, 2007. On that same day, Plaintiff filed a *pro se* a Motion for Leave To File Amended Complaint in which Plaintiff names eleven (11) additional defendants in their individual and official capacities. Thereafter, Defendants

filed a Motion to Dismiss First Amended Complaint for Lack of In Personam Jurisdiction, Improper Venue, and Failure to State a Claim. Plaintiff timely responded, through counsel, Slade C. Trabucco, Esquire.

By Order of October 29, 2007, United States District Judge James C. Dever, III, granted the Defendants' motion to transfer venue and this case was thereafter transferred to the United States District Court for the Western District of Pennsylvania and assigned to the undersigned member of the bench. In the transfer order, Judge Dever specifically stated that the United States District Court for the Western District of Pennsylvania "will consider defendants' other motions,¹ and plaintiff's motion for leave to file an amended complaint." *See Order*, Document No. 32.

Rule 15(a) of the Federal Rules of Civil Procedure provides in pertinent part, as follows:

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.
. . . .

Fed. R. Civ. P. 15(a) (emphasis added).

To date, Defendants have not filed a responsive pleading in this matter. Thus, pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, Plaintiff's Motion is **GRANTED** and the First Amended and Verified Complaint is deemed filed.

It is further **ORDERED** that the caption of this matter is amended as follows:

¹

Defendants' Motion to Dismiss is the subject of a separate Memorandum Opinion and Order filed simultaneously with this Memorandum Order.

DAVID B. McGARREY,)
Plaintiff,)
v.) 02: 07cv1556
PENNSYLVANIA DEPARTMENT OF)
CORRECTIONS, PENNSYLVANIA)
BOARD OF PROBATION AND PAROLE,)
MRS. MARQUART, Records Supervisor at)
SCI Mercer, individually and officially;)
MR. STOWICKY, Superintendent of SCI)
Mercer, individually and officially,)
BRIAN McCOLLIN, Director of CCC)
Allekiski, individually and officially,)
JASON GORDISH, Pennsylvania Department)
of Corrections Counselor, individually and)
officially;)
MR. GENT, SCI Mercer employee,)
individually and officially;)
JANET KIMMELL, SCI Mercer Counselor,)
individually and officially;)
DAVID JENKINS, Community Corrections)
Parole Agent, individually and officially;)
JOANNE RICARDI, RSAT Supervisor)
Parole Agent, individually and officially;)
KATHERINE ROWE, Case Analysis PBPP,)
individually and officially;)
ALLEN M. ROBINSON, PBPP Assistant)
Counsel, individually and officially;)
INVESTIGATOR RAY HEINLE,)
Pennsylvania Department of)
Corrections, individually and officially;)
UNKNOWN DEFENDANTS,)
Defendants.)

So **ORDERED** this 3rd day of December, 2007.

BY THE COURT:

s/Terrence F. McVerry
United States District Court Judge

cc: Slade Culli Trabucco, Esquire
Trabucco Law Group, PA
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Wilmington, NC 28401

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